IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 870 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

RAGHUBHAI MOTIBHAI HARIJAN

Appearance:

MR ASHISH M DAGLI for Petitioner

MR BA VAISHNAV for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 20/02/2001

ORAL JUDGEMENT

Rule. Service of rule is waived by Shri B.A.Vaishnav for the respondent. In this petition, the petitioner-Gujarat State Road Transport Corporation has challenged the validity of the award dated 4.7.2000 passed by the Labour Court, Nadiad in Ref.(LCN) No.316/98.

2. The respondent is working as a driver under the petitioner. In the past, on some occasions the respondent was late in attending his duties and, therefore, on 3 different occasions three different punishments had been inflicted upon him in 1981 and 1983. The respondent had raised a dispute with regard to the said punishments before the Conciliation Officer under the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). In pursuance of failure report submitted by the Conciliation Officer, the disputes were referred to Labour Court and, after hearing the concerned parties and upon perusal of the record and evidence, by the impugned award the Labour Court had quashed and set aside all the three orders whereby punishments were inflicted upon the respondent.

3. In the circumstances, the petitioner-employer has approached this court with a prayer that the award dated 4th July, 2000 passed by the labour court be quashed and set aside. It has been submitted by learned advocate appearing for the petitioner-Shri Ashish Dagli that the respondent had approached the Conciliation Officer at a very belated stage. There was much delay in approaching the authority under the Act because the orders of punishment were passed somewhere in 1981 and 1983 whereas the proceedings under the Act had been initiated somewhere in 1991. It has been submitted by the learned advocate appearing for the petitioner that in view of the delay caused by the respondent, the Conciliation Officer ought not to have referred the dispute to the Labour Court and alternatively he has submitted that even the Labour Court ought not to have entertained the reference and ought not to have quashed and set aside the orders of punishment. It has been submitted by him that the respondent was in the habit of reporting late and on account of his late attending duties, not only the administration but public at large had also sufferred because the respondent was working as a driver with the petitioner-State Road Transport Corporation. He has, therefore, submitted that the impugned award should be quashed so that the respondent can be sufficiently punished.

4. On the other hand, learned advocate Shri B.A.Vaishnav appearing for the respondent-driver has submitted that there was no delay on the part of the respondent in approaching the concerned authority under the Act for the reason that he had not received the impugned orders. He has submitted that the impugned orders were never served upon the respondent and as the respondent was not aware of the impugned orders of

punishment, it was not possible for the respondent to approach the concerned authority under the Act at an earlier point of time. He has submitted that the petitioner did not adduce any evidence in reply to the averments made by the respondent before the Labour Court that the impugned orders were never served upon the respondent though it was pleaded before the Labour Court that the said record had been disposed of by the petitioner and therefore the petitioner was not in a position to state whether the impugned orders of punishment were served upon the respondent. It has been submitted by the learned advocate appearing for the respondent that no evidence was adduced before the Labour Court to show that the old record had been disposed of by the petitioner in pursuance of its policy. Though some averments were made in the pleading with regard to destruction of old record, no evidence was adduced and therefore the Labour Court had rightly disbelieved the fact with regard to destruction of the record and the Labour Court had ultimately quashed the orders of punishment on merits.

5. I have heard the learned advocates at length and have also perused the impugned award. Primafacie, it appears that the respondent was not careful in performance of his duties as he had reported for duties late on several occasions. He could not challenge the orders of punishment within reasonable period as the impugned orders of punishment had not been served upon him. Though the Labour Court quashed and set aside the impugned orders, it did observe that there were charges with regard to attending the duties late by the respondent. It is pertinent to note that the Labour Court had observed that in fact the respondent had reported late for duties but the Labour Court quashed the orders of punishment on the ground that some procedural formalities were not followed by the petitioner, but it appears that the fact remains that the respondent was irregular or late in performing his duty.

6. In my opinion, as there are some findings to the effect that the respondent was not regular in attending to his duties, merely on some technical defects, the respondent could not have been exonerated from the charges which are of serious nature. It is necessary to see that the drivers working under public sector remain regular and punctual so that the bus services operated by the public sector like the present petitioner are not adversely affected and the public at large is not put to difficulties.

7. Under the circumstances, it would be just and proper to inflict some punishment upon the respondent and, in my opinion, ends of justice would be served if the punishment of stoppage of two increments with future effect is inflicted upon the respondent on account of the defaults committed by him on different occasions. The said punishment will have deterrent effect not only on the respondent herein but on other drivers also.

8. In the circumstances, the impugned award dated 4th July 2000 passed in Ref (LCN)No.316/98 by the Labour Court, Nadiad is modified accordingly. The modified award shall be implemented as if the order of punishment was passed on 16th June, 1981, the day on which the first punishment was inflicted upon the respondent.

9. The impugned award is modified to the above extent and the rule is made absolute accordingly with no order as to costs.

20.2.2001 (A.R.DAVE,J)